

NO. 49888-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JOSEPH HANSEN,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Gregory Gonzales, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

No written findings of fact and conclusions of law on the CrR 3.5 hearing have been entered contrary to the requirement they be entered.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

CrR 3.5(c) requires entry of written findings of fact and conclusions of law at the conclusion of a CrR 3.5 hearing on the admissibility of the statements of an accused. The trial court failed to enter written findings and conclusions after Mr. Hansen's CrR 3.5 hearing. Should this court remand for entry of written findings and conclusions?

C. STATEMENT OF THE CASE

The trial court heard a CrR 3.5 hearing. RP¹ 1 92-144. The court found Mr. Hansen's statements to law enforcement admissible. RP 1 148-55. To date, no written findings and conclusions on the CrR 3.5 hearing have been entered.

Mr. Hansen was tried on a single count of hit and run injury. CP 1-2. Statements found admissible at the CrR 3.5 hearing were admitted against Mr. Hansen in the state's case-in-chief. RP 4 471-77, 499.

¹ There are 9 volumes of verbatim report of proceedings ("RP") with consecutively numbered pages throughout. The specific volume number is listed after the "RP" for ease of reference.

At Mr. Hansen's request, the court instructed the jury on the lesser offense of hit and run of an attended vehicle. RP 6 954-55, 993. The jury found Mr. Hansen guilty only of the lesser offense. CP 129, 130; RP 8 1181-82.

At sentencing, the court imposed 80 days. CP 193; RP 9 1298.

Mr. Hansen appeals all portions of the verdict and sentence. CP 201.

D. ARGUMENT

The trial court erred by failing to enter written findings of fact and conclusions of law as required by CrR 3.5.

The trial court held a CrR 3.5 hearing to determine whether Mr. Hansen's statements were the product of police coercion. RP 1 92-155. The court found all the statements sought to be admitted at trial legally admissible. RP 1 148-55. The court subsequently failed to enter post-hearing written findings of fact and conclusions of law as required by CrR 3.5(c). This court must remand this matter for the entry of written findings of fact and conclusions of law, as the law requires.

CrR 3.5(c) provides, "Duty of Court to Make a Record. After the hearing, the court shall set forth in writing: (1) the undisputed facts; (2) the disputed facts; (3) conclusions as to the disputed facts; and (4) conclusions as to whether the statement is admissible and the reasons therefor."

This rule plainly requires written findings of fact and conclusions of law. After the CrR 3.5 hearing, the trial court gave an oral ruling that Mr. Hansen's statements to police officers were admissible, RP 1 148-55, but no written findings or conclusions were ever entered. The trial court's failure to enter written findings and conclusions violated the clear requirements of CrR 3.5(c).

"It must be remembered that a trial judge's oral decision is no more than a verbal expression of his informal opinion at that time. It is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned." *Ferree v. Doric Co.*, 62 Wn.2d 561, 566-67, 383 P.2d 900 (1963). Moreover, an oral ruling "has no final or binding effect, unless *formally incorporated into* the findings, conclusions, and judgment." *Id.* at 567 (emphasis added).

"When a case comes before this court without the required findings, there will be a strong presumption that dismissal is the appropriate remedy." *State v. Smith*, 68 Wn. App. 201, 211, 842 P.2d 494 (1992).² This is so because the court rules promulgated by our supreme

² Although *Smith* involved the suppression of evidence under CrR 3.6, the *Smith* court "agree[d] that the State's obligation is similar under both CrR 3.5 and CrR 3.6 and that cases applying CrR 3.5 can furnish appropriate guidance." *Smith*, 68 Wn. App. at 205. Thus, *Smith's* mandate of written findings under CrR 3.6 should apply with equal force in the CrR 3.5 context.

court “provide[] the basis for . . . needed consistency” and a “uniform approach.” *State v. Head*, 136 Wn.2d 619, 623, 964 P.2d 1187 (1998).

Indeed, “[a]n appellate court should not have to comb an oral ruling to determine whether appropriate ‘findings’ have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.” *Id.* at 624. Where a defendant cannot show actual prejudice from the absence of written findings and conclusions, however, the remedy is remand for entry of written findings of fact and conclusions of law. *Id.*

Here, the court did not enter written findings or conclusions following the CrR 3.5 hearing and provided only an oral ruling. This court must therefore remand this matter to the trial court for entry of the findings and conclusions required by CrR 3.5(c).

E. CONCLUSION

Mr. Hansen's case should be remanded to the trial court for the entry of CrR 3.5 findings and conclusions.

Respectfully submitted October 11, 2017.

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LISA E. TABBUT/WSBA 21344
Attorney for Joseph Hansen

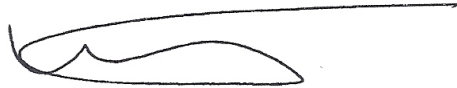
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares:

On today's date, I efiled the Brief of Appellant to (1) Clark County Prosecutor's Office, at CntyPA.GeneralDelivery@clark.wa.gov; (2) rachael.probsteld@clark.wa.gov (3) the Court of Appeals, Division II; and (4) I emailed it to Joseph Hansen. This Court can serve me with any correspondence to Mr. Hansen. I will forward it to him.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed October 11, 2017, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal stroke extending to the right.

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LAW OFFICE OF LISA E TABBUT

October 11, 2017 - 7:25 AM

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